



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,799	07/16/2004	Harilaos Kavvadias	MH0857US (#90556)	6624

28672 7590 06/13/2007
D. PETER HOCHBERG CO. L.P.A.
1940 EAST 6TH STREET
CLEVELAND, OH 44114

EXAMINER

WATKINS III, WILLIAM P

ART UNIT	PAPER NUMBER
----------	--------------

1772

MAIL DATE	DELIVERY MODE
-----------	---------------

06/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/501,799	Applicant(s) KAVVADIAS ET AL.	
	Examiner William P. Watkins III	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/16/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1772

DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this

Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tiozzo (EP 0909721 A1).

The reference teaches non-perforated strips that may be extruded or laminated onto a stretch film that is perforated in areas not covered by the strips (Figure 3, sections 0029 and 0033). The width of the holes may be varied at will (section 0038). The instant invention claims a stretch film with rows of holes with strips laminated between the rows of holes, with the holes in each row extending to the edge of the strips. It would have been within the ordinary skill of the art to have extended the hole size of Tiozzo up to the edge of the strips in view of the teaching to vary the hole size at will. The hole formation

may be made by heated perforation (section 0025), which produces a reinforced rim.

3. Claims 1, 3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heikaus et al. (WO 01/60709 A1, US 2005/0123721 being taken as an equivalent translation of the WO '709 reference).

Heikaus et al. teaches a stretch film with strips that are laminated to the film and rows of holes which are perforated using heat between the strips (Figure 2b, sections 0016 and 0009 of the translation). The instant invention claims rows of holes between non-perforated reinforcing strips with the holes extending up to the edge of the strips. It would have been obvious to one of ordinary skill in the art to have varied the hole size of Heikaus et al. up to the edge of the strips, depending on the need for ventilation, as the reference teaches that the strips will prevent the holes from tearing beyond the edge of the strips (section 006). Use of heated perforation means will produce rims around the holes.

4. Applicant's arguments filed 16 March 2007 have been fully considered but they are not persuasive.

Applicant argues that the examiner has not established a prima-facie case of obviousness in the two art rejections because there is no specific teaching in either reference that states that the holes extend up to the reinforcement strips and because there is no specific teaching in either reference of applicant's result of no tearing at the intersection of the holes and the reinforcing strips.

The examiner disagrees. In the Tiozzo reference there is a specific teaching of varying the hole size at will as noted in the rejection. Such variation would include the hole extending up to the reinforcing strips. It would thus have been obvious to one of ordinary skill in the art to extend the hole diameter to the edge of the strips. In Heikaus et al. the film is being taught as having perforations useful for food items in order to provide air interchange (section 0009). Living food items such as fresh vegetables and fruits have different needs for respiration that will determine the desired hole size. Again variation in the hole size up to the reinforcing strips would have been obvious as the reference explicitly teaches that the strip stops tearing as noted in the above rejection.

Applicant argues that the examiner merely draws conclusions without specific facts. The examiner disagrees. Specific facts

are given above. The examiner draws logical inferences from the stated specific teachings to arrive at conclusions as to the obviousness of the presented claims.

Regarding applicant's argument that neither reference teaches the prevention of tearing by extending the holes to reinforcing strips and that therefore this is an unexpected result, the examiner also disagrees. Heikaus et al. teaches that tearing is stopped at the reinforcing strips. As tearing often starts at stress points such as edges and extends outwards, it would have been expected by one of ordinary skill in the art that if the edge of the hole is adjacent the strip there would be minimal or no tearing between the hole edge and the reinforcing strip. Thus applicant's result cannot be said to be unexpected, but instead is an obvious extension of the specific teaching of Heikaus et al.

The examiner notes that one of ordinary skill in the art is allowed to draw inferences from knowledge of the prior art and is not limited to the specific teachings of the prior art. "As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in

the art would employ." *KSR International Co. v. Teleflex Inc.*,
82 U.S.P.Q.2d 1385 at 1396, (Supreme Court) (2007).

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

Art Unit: 1772

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**WILLIAM P. WATKINS III
PRIMARY EXAMINER**

WW/ww

June 10, 2007